

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of	)	OAH No. 14-1366-ADQ
	)	Fraud Control Case No.
L G	)	Division No.
_____	)	

**DECISION AND ORDER**

**I. Introduction**

L G is a former Food Stamp<sup>1</sup> recipient. On August 8, 2014, the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program.<sup>2</sup>

Mr. G's hearing was held on September 12, 2014. The Division attempted to provide him advance notice of the hearing, by both certified mail and by first class mail. That mail was sent both to his last known address in Alaska<sup>3</sup> and to an address in California, which was discovered after this case was initiated. The notice sent to the Alaska address was returned as undeliverable; the notice sent to the California address was unclaimed as of the date of hearing.<sup>4</sup> Mr. G did not appear for the hearing and it was held in his absence.<sup>5</sup>

Dean Rogers, an investigator employed by the Division's Fraud Control Unit, represented and testified on behalf of the Division. Amanda Holton, an eligibility technician employed by the Division's Fraud Control Unit, also testified on the Division's behalf. The Division's exhibits were admitted into evidence.

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<sup>1</sup> Congress amended the Food Stamp Act in 2008 to change the official name of the Food Stamp program to the Supplemental Nutrition Assistance program ("SNAP"). The program is still commonly referred to as the Food Stamp program.

<sup>2</sup> Ex. 3.

<sup>3</sup> See Ex. 9, p. 1, which shows that Mr. G received and redeemed Food Stamp benefits in April 2014.

<sup>4</sup> Dean Rogers' testimony; Ex. 1, p. 3; Exs. 4, 6.

<sup>5</sup> Mr. G was telephoned at the time of hearing. He did not answer the call and a voicemail message was left for him. He returned the call later that same day, after the hearing had been held, and was advised by staff of the procedure and deadline to request a new hearing. The federal Food Stamp program regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4). The same regulations set out circumstances under which the recipient may seek to vacate this decision and have a new hearing if there was good cause for the failure to appear. Mr. G, however, did not follow up on his September 12, 2014 conversation with staff and request a new hearing date.

This decision concludes that Mr. G committed a first Intentional Program Violation of the Food Stamp program.

## **II. Facts**

The following facts were established by clear and convincing evidence except where otherwise noted.

Mr. G applied for Food Stamp benefits on November 14, 2013.<sup>6</sup> The application contains a question asking if he had been convicted of a drug-related felony. He answered “no” to that question.<sup>7</sup> However, only 13 days earlier on November 1, 2013, he was convicted of a drug felony for a 2005 offense.<sup>8</sup> Mr. G’s application was approved and he received Food Stamp benefits from November 2013 through April 2014.<sup>9</sup>

The Division calculated that Mr. G received \$1,258 in Food Stamp benefits to which he was not entitled, as a result of his Food Stamp application being approved.<sup>10</sup>

## **III. Discussion**

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence<sup>11</sup> that Mr. G intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”<sup>12</sup> To meet this standard, the division must show that it is *highly probable* that Mr. G intended to provide or knowingly provided incorrect information.<sup>13</sup>

A review of the facts demonstrates that Mr. G has a conviction for a drug felony, but represented in his Food Stamp application that he did not. The question then arises as to whether this was an intentional misrepresentation. Ordinarily, the only direct evidence of a person’s intent is testimony from that person on that subject. However, Mr. G failed to appear for or testify at his hearing. Accordingly, there is no direct evidence of his intent in the record.

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<sup>6</sup> Ex. 7.

<sup>7</sup> Ex. 7, p. 10.

<sup>8</sup> A review of the Judgment of Conviction reveals that Mr. G was originally given a suspended imposition of sentence in his 2005 criminal case; the prosecution filed a petition to revoke in May 2013; and Mr. G admitted the petition, which then resulted in his final conviction on November 1, 2013. See Ex. 10.

<sup>9</sup> Exs. 8, 9.

<sup>10</sup> Amanda Holton’s testimony; Ex. 11.

<sup>11</sup> 7 C.F.R. § 273.16(e)(6).

<sup>12</sup> 7 C.F.R. § 273.16(c).

<sup>13</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

Intent can, however, also be deduced from circumstantial evidence.<sup>14</sup> Mr. G was convicted for the drug felony on November 1, 2013. It is exceedingly improbable, if not impossible, for him to have forgotten about that conviction at the time he applied for benefits, only 13 days later. Consequently, Mr. G intentionally misrepresented on his application that he did not have a felony drug conviction.

The Division has therefore met its burden of proof and established that Mr. G made an intentional misrepresentation on his November 14, 2013 application for benefits. This was his first Intentional Program Violation.

#### **IV. Conclusion and Order**

Mr. G has committed a first Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a 12-month period, and he is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.<sup>15</sup> The Food Stamp program disqualification period shall begin February 1, 2015.<sup>16</sup> This disqualification applies only to Mr. G, and not to any other individuals who may be included in his household.<sup>17</sup> For the duration of the disqualification period, Mr. G's needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, he must report his income and resources as they may be used in these determinations.<sup>18</sup>

The Division shall provide written notice to Mr. G and any remaining household members of the benefits they will receive during the period of disqualification, or that they must reapply because the certification period has expired.<sup>19</sup>

If over-issued Food Stamp benefits have not been repaid, Mr. G or any remaining household members are now required to make restitution.<sup>20</sup> If Mr. G disagrees with the

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<sup>14</sup> In the criminal case of *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999), the Alaska Supreme Court stated that “in the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct . . . .”

<sup>15</sup> 7 C.F.R. § 273.16(b)(1)(i); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>16</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> Cir. 1995). Insofar as 7 C.F.R. § 273.16(e)(9)(ii) is inconsistent with this result, it must be disregarded as contrary to statute, as discussed in *Garcia* and in *Devi v. Senior and Disabled Serv. Div.*, 905 P.2d 846 (Or. App. 1995).

<sup>17</sup> 7 C.F.R. § 273.16(b)(11).

<sup>18</sup> 7 C.F.R. § 273.11(c)(1).

<sup>19</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>20</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.<sup>21</sup>

Dated this 28<sup>th</sup> day of November, 2014.

*Signed*

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Andrew M. Lebo

Administrative Law Judge

## **Adoption**

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 16<sup>th</sup> day of December, 2014.

By: *Signed*

\_\_\_\_\_  
Name: Andrew M. Lebo

Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]

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<sup>21</sup> 7 C.F.R. § 273.15.